STATE OF MICHIGAN

COURT OF APPEALS

ALL PHASE ELECTRIC SERVICE LTD.,

Plaintiff/Counter-Defendant-Appellee,

v

HAMLIN SOFTBALL, INC., d/b/a SUBURBAN SOFTBALL,

Defendant/Counter-Plaintiff/Third Party Plaintiff-Appellant,

v

SECURA INSURANCE, a Wisconsin Corporation, CHARLES L. DESCAMPS & SON INSURANCE AGENCY, INC., a Michigan Corporation, BUD O'BRIEN, a married man, and JOSEPH DESCAMPS, a married man,

Third-party Defendants, jointly and severally-Appellees.

UNPUBLISHED
November 8, 2002

No. 233190
Oakland Circuit Court
LC No. 98-002911-CK

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

In this insurance action, Defendant/Counter-Plaintiff/Third-Party Plaintiff Hamlin Softball, Inc, d/b/a Suburban Softball ["Hamlin"] appeals as of right from a grant of summary disposition in favor of Third-Party Defendants Secura Insurance ["Secura"] and Bud O'Brien. We affirm.

Hamlin owns and operates a softball complex in Rochester Hills. The complex has eight baseball diamonds, each of which is illuminated by outdoor lighting fixtures. In April 1997, Hamlin purchased general property insurance through Joe Descamps, insured by Secura. In June 1997, lightning struck an electrical supply panel at the softball complex, which caused damage to the complex's outdoor lighting system. All Phase Electric Service, Ltd was chosen to repair the damage and had completed its repair work by the end of July 1997.

In July 1997, Hamlin filed a claim with its insurer, Secura, for the damage to the lighting system. In October 1997, Secura denied coverage for Hamlin's claim, stating that the outdoor lighting system was not covered by Hamlin's policy. In January 1998, the electrical repair company filed suit against Hamlin for breach of contract and to foreclose against its construction lien. Hamlin, in turn, filed a counter-suit and impleaded Secura, the independent insurance agency, and individual agents. Secura moved for summary disposition, arguing that Hamlin's insurance policy did not cover the outdoor lighting system, and the trial court agreed. All remaining claims were settled and/or dismissed, and a final order was entered on February 23, 2001. Hamlin appeals the trial court's summary disposition judgment.

The trial court granted Secura's motion for summary disposition pursuant to MCR 2.116(C)(10). Summary disposition of all or part of a claim or defense may be granted when

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). On appeal, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek*, *supra* at 337.

A. Plain Meaning of the Contract Language

The insurance contract stated, in pertinent part,

> 1. Covered Property
>
> Covered Property as used in this Coverage Part, means the type of property described in this section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in Declarations for that type of property.
>
> a. Building, meaning the building or structure described in the Declarations, including:
>
> (1) Completed additions;
>
> (2) Fixtures, including outdoor fixtures;
>
> (3) Permanently installed:
>
> (a) Machinery and
>
> (b) Equipment.

The insurance policy specifically lists four buildings which are covered, each with separate coverage limits. The lighting system was not listed within the declaration section.

Hamlin argues that the plain meaning of "outdoor fixtures" includes the lighting system which illuminates the softball fields. In the alternative, Hamlin argues that the insurance contract language is ambiguous and must be construed against the drafter, Secura, as to include the lighting system. The scope of insurance coverage is generally a legal issue, determined by the language of the policy. *Koster v June's Trucking, Inc*, 244 Mich App 162, 171; 625 NW2d 82 (2000). The principles of contract construction apply to the construction of insurance contracts. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1995).

If the contractual language is clear, it will be enforced as written. *Id*. An insurance contract is ambiguous when it can reasonably be understood in different ways. *Id*. If a fair reading of the entire contract leads one to understand that there is coverage under particular circumstances, and another fair reading leads one to understand that there is no coverage under the same circumstances, the contract is ambiguous. *Id*. However, if the contract fairly admits of but one interpretation, it is clear regardless how inartfully worded or clumsily arranged. *Id*.

There is no dispute between the parties that the lighting system, if covered under the policy, would fall under A(1)(a)(2)- "Fixtures, including outdoor fixtures." We believe that the insurance contract is clear, not ambiguous, and that this clause can only reasonably be read to refer to the fixtures inside and outside the structure of the building. In the declaration section, the policy stated, "Insurance at the described premises applies only for coverages for which a limit of insurance is shown." Four buildings were listed in this section with corresponding insurance limits. No other property was listed in the declaration section. In defining what the policy meant by a building, the policy stated that it included "fixtures, including outdoor fixtures." There is no dispute between the parties that no part of the outdoor lighting system at issue was attached to the building in any way, i.e., the lighting system components were not fixtures in relation to any of the buildings. Therefore, we conclude that the insurance policy did not cover the outdoor lighting system, and summary disposition was proper.

B. Reasonable Expectation of Insured

Hamlin asserts that its reasonable expectation was that the lighting system was covered by the insurance policy because Hamlin thought it was buying "park" insurance, i.e., all property critical to the operation of the softball complex was covered. In construing an insurance contract, a court may consider the reasonable expectations of the insured. *Allstate Ins Co v Keillor (After Remand)*, 450 Mich 412, 417; 537 NW2d 589 (1995). The court must consider the policy language objectively to determine whether an insured could have reasonably expected coverage. *Id*.

For the reasons discussed above, the "outdoor fixtures" referenced in the insurance contract clearly referred to those attached to the buildings which the policy covered. No part of the lighting system was attached, annexed, or adapted to the covered buildings. Furthermore, the four buildings were insured for a total of $70,000. Hamlin alleged in its counterclaim the repairs themselves to the lighting system was over $76,000. In fact, Hamlin even conceded on appeal that the lighting system was "probably more valuable then [sic] all of the buildings on the premises combined." Had the policy covered the lighting fixtures, Hamlin would have been

woefully underinsured. Therefore, we conclude that it was unreasonable for Hamlin to expect that the lighting system was covered under its insurance policy.

C. Insurer Responsible for Error of Its Agent

Hamlin contends that it relied on its insurance agent, Joe Descamps, when it initially purchased the insurance to ensure that the insurance policy covered its needs. Hamlin argues that Secura should be held liable for the agent's negligence. However, Secura could only be held liable for Descamps' actions if he was an agent of Secura. *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 109; 577 NW2d 188 (1988). Independent insurance agents are considered to be agents of the insured, not the insurer. *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 20; 592 NW2d 379 (1998). Descamps testified that he was an independent agent who insured his clients through a number of different insurance companies. Such testimony is generally sufficient to prove that the independent agent is an agent of the insured and not of the insurer. *Id*. Hamlin presented no evidence to the contrary. Therefore, regardless of Descamps' liability, Secura can not be held liable and summary judgment was proper.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder